Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF METROPOLITAN AREA COMMUNICATIONS COMMISSION

These Comments are filed on behalf of the members of the Metropolitan Area Communications Commission (MACC) in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, MACC believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

CABLE FRANCHISING IN OUR COMMUNITY

Community Information

The Metropolitan Area Communications Commission (hereinafter "MACC") represents thirteen (13) cities and one (1) county -- Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plaines, Rivergrove, Tigard, and Tualatin, -- and unincorporated portions of Washington County. In 1980, these local governments formed as an intergovernmental association under Oregon law to enable its member jurisdictions to work cooperatively and jointly on communications issues, particularly for joint franchising of cable services and the common administration and regulation of such franchise agreements.

Each of the 14 jurisdictions appoints a Commissioner to serve on MACC's governing body. These representatives are mayors, city councilors, city or county staff, and former elected officials from these governments.

The Commission's service area includes the western and southern portions of the Portland (OR) metropolitan area - often referred to as the "Silicon Forrest" because of the number of high-tech companies and international headquarters located here. The population of this area is over 503,000.

Our Current Franchises

MACC administers and regulates two (2) franchises in the Washington County area. Each is currently held by Comcast Corporation, Inc. This includes, a multi-jurisdictional "MACC Franchise" and a separate cable franchise administered under an intergovernmental agreement for Washington County, OR. The Commission also has an intergovernmental agreement with the City of Milwaukie, Oregon, to administer their Comcast cable franchise.

MACC's larger franchise, covering most of our member jurisdictions for an area known as the Tualatin Valley-MACC, was renewed on February 1, 1999, and expires on January 31, 2014. Comcast has nearly 106,000 subscribers under this franchise.

MACC's second franchise, covering portions of unincorporated Washington County, was granted on January 1, 1995, and expires on December 31, 2009. Comcast has nearly 21,000 subscribers under this franchise.

The Milwaukie Franchise service area is the municipal boundaries of that city, and was granted on June 15, 1999, and expires in June 2012. The City's population is approximately 21,000 and Comcast has over 5,500 subscribers in the city.

The MACC members negotiated their first cable franchise in 1982. Since that time, MACC has handled five (5) transfers of control of that franchise and one (1) renewal.

Under the statutory timelines of the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. We are not yet negotiating a franchise renewal for any of these franchises.

Gross Revenues

Our franchise requires the cable operator pay MACC five percent (5%) of their revenues as a franchise fee based on the gross revenues of the operator, in accordance with the Federal Cable Act. Our franchises define gross revenues to include:

"all amounts, in whatever form and from all sources, earned either by the Comcast from the operation of their Cable System to provide Cable Services within the Franchise area, or by any Affiliate only to the extent such amounts are earned from the operation of Comcast's Cable System to provide Cable Services within the Franchise area. "Gross Revenues" shall include, without limitation, amounts for Basic Service, tiers of service and premium services, audio services, Subscriber installations and transactions, leased access, advertising, equipment rentals, and all other revenues derived from the operation of Comcast's Cable System to provide Cable Services. Revenues that are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per Subscriber basis measured in a consistent manner from period to period.

"Gross Revenues" shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Comcast and an Affiliate that represent a transfer of funds between them and the Affiliate, and that would otherwise constitute gross Revenues of both Comcast and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, Comcast's operating expenses which are payable from their revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent Comcast could, in concept, have earned such types of revenue in connection with the operation of their Cable System to provide Cable Services and recorded such types of revenue in its books and records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that Comcast is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt."

<u>Public, Education, and Government Access</u>

Per the larger "MACC" Franchise agreement, the cable operator provides six (6) public, educational, and/or governmental ("PEG") access channels on the cable system. Of these, one (1) channel is devoted to government access; one (1) channel is shared for government and educational access; one (1) channel is devoted to educational access (Community College); two (2) channels are devoted to community and public access; and one (1) channel is programmed across the Portland metropolitan area, by six (6) Access centers, for broadcast of meetings of the regional government, public access, and other programming with regional value..

Our franchise requires that Comcast provide $1.00 per subscriber per month to fund a grant program. Capital grants are recommended by a citizen committee through a competitive application process to Access providers and users of Comcast's I-Net (known as the Public Communications Network or PCN).

<u>Institutional Network</u>

Our franchise requires Comcast to construct a fiber optic institutional network ("I-Net") to replace a 14-year old coaxial cable network. The new network, called the Public Communications Network (PCN), links public buildings, schools, and nonprofit organizations for a variety of communication uses. Today about 200 sites are served by the I-Net.

I-Net Users pay Comcast a monthly service fee which reimburses them for: 1) the original cost to design and upgrade the network to fiber; 2) the cost of transmission and terminal equipment to connect sites; 3) Comcast's annual maintenance costs to manage and operate the network; and 4) Comcast's costs to finance this upgrade.

As discussed above, the $1.00 per subscriber per month provided by Comcast is available through a grant program. I-Net users typically apply for funding to: purchase of system routers, servers, and other communications devices connected directly to Comcast's PCN site terminal equipment; pay the monthly Comcast charges for the service; or pay for Comcast's costs to connect new sites to the network. The grant program also encourages proposals for "innovative" systems to make new or creative use of the existing I-Net.

We use the I-Net (PCN) facilities for the following purposes:

Homeland Security, Emergency, and Public Safety: transmitting 9-1-1 emergency information to all area police and fire agencies including computer-aided dispatch, crime/criminal information/statistics; transmitting state criminal justice, emergency, and Homeland Security information to area police and fire departments; video training and information to fourteen (14) area fire and EMS stations; interagency high-speed email/Internet research systems; and, emergency alert capabilities.

Education: All area K-12 public schools and colleges/universities account for over one-half of all of the I-Net sites. These schools are linked for student records, student/teacher high-speed email/Internet research; inter-school telephone systems, VoIP, and distribution of media.

Library Links: Fifteen (15) area libraries are connected, facilitating interlibrary loan, patron high-speed email/Internet research, computerized cataloging/checkout, and distribution of materials.

Medical Services for Low Income Migrant Laborers: Four Virginia Garcia Medical Clinic sites are linked for administrative and patient records purposes.

City and County Governments: Nearly every city and all county facilities are connected to the network, providing computer-aided drafting/mapping/CAD transmissions; on-line citizen information retrieval/permit application/registration services, inter-facility telephone services; large file transfer; high-speed Internet/email and other intergovernmental information and services.

Emergency Alert System

Our franchise requires the cable operator provide emergency alert capability in accordance with Federal Law, and in compliance with the FCC-approved Oregon State Emergency Alert System (EAS) plan, and the Local Area EAS plans that apply to Washington and Clackamas Counties (all or part of which are in our franchise areas.). The cable operator is required to cooperate with MACC and local emergency officials to develop policies and procedures for the use of the emergency broadcast capability. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Especially over the last several years, MACC worked closely with our area 9-1-1 consortium and Comcast to improve the timely use of the EAS system for "amber alerts" and local weather-related emergencies.

Consumer Protection / Customer Service Standards

MACC strongly emphasizes the consumer protection and customer service obligations of our franchises. This emphasis has proven to be effective, and important to area subscribers. Immediately after approving a change of control from TCI to AT&T, the company began failing the telephone answering standard. They did not meet the 90% requirement for seven (7) quarters – 4th quarter of 1999 through the 1st quarter of 2001. During this period, MACC worked closely with the staff of the AT&T call center, but also imposed fines per the franchise. For the two MACC / Washington County area franchises, AT&T was fined a total of $282,000.

In addition, MACC has used franchise provisions to delay rate increases on subscribers whose service was not upgraded per the timeline in the franchise (see "Upgrade" below).

The following MACC franchise requirements are modeled on the federal standards . Some of the most important provisions include:

1) Comcast must maintain at lease one (1) **customer service center** in the Franchise Area that is open during normal business hours to provide subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints;

2) The area call center must be open **"normal business hours,"** defined as those hours during which most similar businesses in the franchise area are open to serve customers, including some evening hours at least one night per week and/or some weekend hours;

3) Comcast is allowed to use a **24-hour toll-free telephone number** to provide access to subscribers;

4) Comcast must have **trained company representatives** available to respond to telephone inquiries a minimum of twelve (12) hours each day, Monday through Friday, and eight (8) hours on Saturday and Sunday. The cable operator may use a telephone system answered by a service or an automated response system for hours they are not open. Calls to this system or service must be responded to by a trained company representative before the end of the next business day;

5) Under **normal operating conditions**, a customer service representative must answer incoming subscribers' calls within thirty (30) seconds, including wait time, from when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds;

6) Comcast is required to meet the **30 second standard for no less than ninety (90) percent of all calls received**, measured quarterly. This differs from the federal standard, but allows much easier calculation of the calls meeting the standard and there does not have to be a separate agreement on the time period (needed when percent of the "time" is used);

7) Under normal operating conditions, no more than three (3) percent of all callers will receive a **busy signal**, measured quarterly;

8) No more than five (5) percent of all calls received will be **lost or abandoned**, measured quarterly;

9) Under normal operating conditions, **service installations to sites within 125 feet of the existing cable distribution system** will be completed within seven (7) business days of the order, for at least ninety-five (95) percent of such installations, as measured on a quarterly basis;

10) **New installations that are more than 125 feet from the existing cable distribution system** must be provided within thirty (30) days of the request, provided the subscriber is willing to pay charges associated with the installation;

11) Where a **request for new service** can be satisfied without a service call, Comcast must complete such installations within three (3) business days

from the date of request, for at least ninety-five (95) percent of such installations, as measured on a quarterly basis;

12) Comcast must offer subscribers **"appointment windows"** for installations, service calls, and other installation activities either at a specific time or during a four (4) hour (maximum) time block, but may also schedule such services outside normal business hours for the convenience of the customer. Comcast is not allowed to cancel such service appointments after the close of business on the business day prior to the scheduled appointment;

13) If Comcast technicians expect to be **late for a subscriber appointment** and not be able to keep the appointment as scheduled, they are required to attempt to contact subscriber at least two (2) times;

14) Excluding conditions beyond Comcast's control, they will **begin working on service interruptions** promptly, and not later than twenty-four (24) hours after they become aware of the interruption, and must begin to correct all other service problems the next business day after becoming aware of the problem;

15) Comcast must **provide subscribers with written information** on each of the following at the time of installation of service, at least annually, and at any time upon request: a) products and services offered; b) prices and options for programming, conditions of programming subscriptions, and applicable taxes and fees; c) installation and service maintenance policies; d) instructions on how to use the cable service; e) the channel line-up; and f) billing and complaint procedures, including our (the LFA) address and telephone number;

16) New subscribers must be specifically informed as to whether there will be a **charge to drop the service** and if there is any charge for terminating a promotional or free product or service, the charge must be disclosed in writing prior to connection of the service or provision of the product;

17) **Bills must be fully itemized**, including, but not limited to, basic and premium service charges and equipment charges. They must also clearly delineate all activity during the billing period, including optional charges, rebates and credits;

18) In the case of a billing dispute, Comcast must **respond to written complaints** from subscribers within thirty (30) days;

19) **Refund checks** must be issued promptly, but no later than either: the subscriber's next billing cycle following resolution of the request or within thirty (30) days, whichever is earlier;

20) **Service credits** must be issued no later than the customer's next billing cycle following determination that a credit is warranted;

21) **Disconnection requests** must be effective immediately upon the subscriber's oral or written request, and the subscriber may not be billed for any service provided after the request, and is entitled to refunds on any prepaid period;

22) Comcast must comply with subscriber privacy rights in accordance with federal, state, and local laws;

23) Comcast must keep an accurate and comprehensive **file of any and all complaints** regarding the operation and performance of the cable system within the franchise area, consistent with subscriber privacy rights. These files must be available for our review during normal business hours;

24) Comcast must provide a **quarterly report** (within forty-five (45) days of the end of the preceding quarter) that includes: a) the nature and type of customer complaints they've received; b) the number, duration, general location, and customer impact of unplanned service interruptions; c) any significant construction activities affecting the quality of the cable system; d) subscriber counts, by service tiers, and EBU counts; e) total disconnections and major reasons for them; f) average response times and total number of service calls; and g) any video programming changes (additions/deletions);

25) Comcast must provide an **executive summary report** within fifteen (15) days of the end of the period, including: a) phone activity report, on a monthly basis; b) new areas constructed and available for cable service, on a quarterly basis; and c) the total number of subscribers by service categories, on a quarterly basis. Comcast may negotiate for less frequent reporting (and has);

26) If requested by a subscriber, Comcast must make available a form of **parental control or lockout device, trap, or filter** to allow the subscriber to control access to both the audio and video portions of any or all channels. Comcast must notify subscribers of these services and is allowed to charge for them;

27) Comcast must comply with the **Americans with Disabilities Act**, any amendments to it, and any other applicable federal, state or local laws or regulations.

<u>Upgrade</u>

In order to ensure that our residents had access to current telecommunications technologies, our franchise required Comcast to upgrade their cable system in the Franchise Area to a system of "fiber to the neighborhood node" architecture. This entailed using fiber optic cable to tie into the existing hybrid fiber/coaxial cable system. The upgraded system was required to: provide at least seventy-five (75) analog channels of video programming, serve no more than fifteen hundred (1,500) customers per fiber node, provide active electronics of at least 550 MHz capable equipment, or higher bandwidth, be capable of supporting addressable equipment throughout the System and shall enable the provision of digitally compressed video services, be two-way capable and able to support two-way high speed Internet Access. The franchise required the upgraded system to deliver high quality signals that meet, or exceed, FCC technical quality standards regardless of the particular manner in which the signal is transmitted , meeting or exceeding the minimum system design and performance specifications required by the FCC.

Because of the amount of work to be done in the rights-of-way for the upgrade, the cable operator was required to provide monthly reports on the upgrade construction, including any problems related to obtaining local permits. We provided the cable operator updates on population and demographic trends and projections.

In planning the upgrade, the cable operator was required to make construction decisions based solely on legitimate engineering decisions, without considering the income level of any portion of the franchise area.

The franchise allowed the cable operator to upgrade the system in phases, beginning within six (6) months of the effective date of the franchise and completed on or before January 31, 2002 – a period of four (4) years. In February 2001, Comcast told us a shortage of capital would delay completion of the residential cable system. We negotiated an agreement allowing the company (AT&T, at the time) an additional six (6) months for this construction. In exchange for the extension, the cable operator covered our legal costs for the extension negotiations, provided 30 complimentary cable modem services for use by public and non-profit entities, relocated a PEG Access center headend, and gave residential subscribers whose service was not yet upgraded a small credit (30 cents) and agreed not to impose rate increases on their services until they were upgraded.

This upgrade has allowed Comcast to offer its subscribers high-speed cable modem Internet services, digital telephone, as well as hundreds of digital channels.

<u>Service Provision</u>

Our franchise requires that the cable operator currently provide service to all residential dwelling units in the Franchise Area with equivalent availability to Comcast's cable service under nondiscriminatory rates and reasonable terms and conditions, and they are not allowed to arbitrarily refuse to provide cable service to any person.

If a service request is made by a property located more than one hundred and twenty-five (125) feet from Comcast's distribution cable, or is located in an area with a density of less than forty (40) residences per cable-bearing strand mile of trunk or distribution cable, Comcast require the property owner to share in the costs of construction, including material, labor, and easements. Comcast may only charge the property owner three-quarters (3/4) of the actual charges for the construction that exceeds 125 feet.

Competitively Neutrality for Subsequent Franchises

If we enter into or grant another franchise, permit, license, authorization, or other agreement of any kind to use the public rights-of-way to operate a cable system or providing cable service anywhere within our service area, the material provisions of that authority must be reasonably comparable to those in the Comcast cable franchise, in order not to grant an unfair competitive advantage and to provide all parties equal protection under the law.

Insurance.

Our franchise requires that Comcast must have adequate insurance during the entire term of the franchise to protect against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the franchise or involve the cable operator, its duly authorized agents, representatives, contractors, subcontractors and their employees. Comcast is allowed to provide self-insurance.

Initial Limits: Comcast must keep insurance in effect in accordance with the minimum insurance limits herein set forth by MACC. Comcast shall obtain policies for the following initial minimum insurance limits:

1) Commercial General Liability: Two-million dollar ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollar ($2,500,000) aggregate limit; one million dollar ($1,000,000) limit for broadcasters liability.

2) Automobile Liability: Two-million dollar ($2,000,000) combined single limit per accident for bodily injury and property damage; and

3) Employer's Liability: Two-million dollar ($2,000,000) limit.

Letter of Credit

Comcast is required to provide security for its faithful performance of all provisions of the franchise in the amount of one-hundred-thousand dollars ($100,000), to be maintained throughout the term of the franchise.

Performance Bond

Comcast was required to post a $100,000 performance bond until it had successfully completed the upgrade of its cable system.

Our cable franchise grants Comcast access to the public rights-of-way and compatible easements in order to provide cable television service. Apart from the franchise, the cable provider is required to obtain permits from the appropriate city or county office in order to perform the actual work in compliance with local construction codes.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

> *"On an annual basis, but no more than every twelve (12) months, upon thirty (30) days prior written notice, we have the right to conduct an independent audit or review of Comcast's records which are reasonably related to the administration or enforcement of the franchise, in accordance with generally accepted accounting principles. We may use an independent certified public accountant to audit or review Comcast's financial records. All related records must be made available locally, in their offices. If the audit or review shows that franchise fees have been underpaid by three percent (3%) or more, Comcast is required to reimburse us for the total cost of the audit or review."*

The MACC Franchising Process / MACC and FCC Roles

The Commission has professional staff which is available to work with cable providers to negotiate franchises on behalf of all of the member governments. Since, a cable franchise is a contract between local governments and the cable operator, its terms must be negotiated. The Federal Cable Act requires local governments to determine the cable-related needs and interests of their community and to make their best efforts to ensure that these are addressed in the franchising process. After MACC staff negotiates a franchise with a cable operator, the Board of the Commission must approve the franchise in order for it to be forwarded to the member jurisdictions for approval. Once approved by the governmental body of each of the member jurisdictions, both parties are bound by the contractual obligations of the franchise.

In compliance with federal law and our goals related to video services for the citizens of our franchise area, we would never consider our existing cable franchises to be exclusive. Instead, we are open to competition from a variety of sources.

Through our daily franchise administration and enforcement, we carry out legitimate policy objectives, updated and redefined by the 1996 Telecommunications Act. In that 10-year old law we see a clear distinction between the role of the FCC and local franchising authorities. The FCC's role in setting minimum customer service standards, developed with the cable industry, and other guidelines for local authorities. Our role is substantially different, requiring determination of local needs, local management of rights-of-way, and local enforcement of customer service / consumer protection. These are roles that do not logically lie with a federal agency thousands of miles away from our service area.

While a franchise is negotiated by the local government as a contract, the process provides the public and cable operator additional due process rights, and consequent additional obligations on the local government. These include state-mandated open public meetings and local requirements to conduct publicized hearings on the grant, renewal or transfer of ownership of a cable franchise.

Our current franchise with Comcast provides that all rights and privileges granted under the agreement are subject to applicable law as it is amended over the franchise term.

Competitive Cable Providers

MACC has been interested in competitive cable franchising since the passage of the 1996 Telecommunications Act. We believed that law made substantial changes which allowed all types of companies to enter the cable market, and reiterated federal law prohibiting exclusive franchises. Although the growth of satellite television services has been widespread, MACC area citizens do not see such services as comparable to a cable because they don't carry PEG channels. In the meantime, MACC and its member jurisdictions have been eagerly awaiting the growth of wireline cable competition.

Competitive providers - 2000 – 2001

In early 2000, MACC was contacted by two competitive cable providers -- RCN, Corp. and WideOpenWest (WOW). Each made a request to negotiate a cable franchise to provide services to our area. MACC staff spent approximately 120 days in biweekly or monthly meetings, negotiating each of these competitive agreements. Unfortunately, WOW decided not to pursue a franchise and RCN franchise efforts ended when the company reduced national operations due to tight financial markets in 2001.

1) Franchise provisions that WERE in the incumbent's cable franchise, which were acceptable to both competitive cable providers:

- Immediate effective date
- Same calculation and administrative provisions for franchise fees (tax liability, payment dates, payment reports, audits, interest, etc.)
- The same insurance requirements and amounts;
- The same letter of credit amount;
- Comparable construction and provision of complimentary connections to public buildings;

- Same undergrounding requirements;
- Same fines for franchise violations;
- Same transfer, change of control, and revocation provisions;
- Same PEG channel requirements
- Same I-Net performance standards;
- Comparable "origination" sites for broadcast of original programming on PEG channels (10 sites).

2) Franchise provisions that WERE NOT in the incumbent's cable franchise, but were acceptable to both competitive providers:

- $500,000 performance bond, lowered to $100,000 upon completion of construction of their cable system (incumbent was allowed to drop performance bond entirely, with completion of upgrade activities);
- Monthly meetings to discuss construction of cable system;
- Franchise was granted for services to 12 of the 14 MACC member jurisdictions; these two cities are over 5 miles from any other MACC jurisdiction and approved of a MACC franchise that did not provide these competitive service to their municipal boundaries;
- Agreement to consider service extensions to the two un-served cities and any land added to the area's "urban growth boundary" during their construction;
- Twenty (20) high-speed residential-type cable modems or equivalent transport devices for the term of the franchise for MACC for use for public agencies;
- Permission for MACC to install or affix and maintain wires and equipment that is being used for governmental purposes (including services for police, traffic, water, telephone, or signal systems) without charge, where space is available;
- Service to entire service area within five (5) years of grant of franchise;
- Five "incidental payments," increasing in amounts, starting in the 3rd year of the franchise, to help support the I-Net and PEG.

Competitive provider - 2005 – 2006

In November 2005, approximately a year after they began building their fiber-to-the-premise (FTTP) system in portions of the MACC service area, Verizon Northwest, Inc. agreed to an initial meeting with MACC to began negotiations on a cable franchise. As of this filing, we have two more meetings scheduled.

In September 2004, staff from Verizon Northwest, Inc. visited a number of MACC cities and Washington County to provide a briefing on their plans to upgrade their existing telephone plant to a fiber-to-the-home (FTTP) system. When our members told us of these plans, MACC sent several letters to Verizon, advising them of MACC's role for cable franchising and asking for a briefing on the FTTP system and Verizon's plans to provide video services. In early November, Verizon

Northwest's senior management team from the region. agreed to a meeting. There we reiterated our willingness to negotiate a cable franchise with Verizon, but were told the company did not currently have plans to provide video services in the MACC service area over the FTTP network.

In July 2005, as the Verizon FTTP construction was well underway in major portions of the MACC service area, we again contacted Verizon regarding a cable franchise and provided copies of the current Comcast cable franchise and the franchise negotiated with RCN in 2000 (that was not implemented because RCN lacked the finances to proceed). On August 12, 2005, we met with Verizon again; the company was still not interested in planning for cable franchise negotiations.

On November 15, Verizon presented MACC staff with a map of their FTTP service area, including information on the portions of the MACC service areas they did not plan to serve, how their technology would provide video services, bandwidth speeds for Internet services, and cable pricing and channel line-ups for cable services they were providing elsewhere in the country. We discussed the need for Verizon to make a formal request to the Board of our Commission to authorize us to negotiate a cable franchise with them.

On December 15, 2005, our Commission authorized the cable negation with Verizon and the first negotiation was held on January 25, 2005.

MACC used the incumbent franchise as the prototype for negotiations with competitive cable providers in 2000-2001 in order to create a franchise that was most comparable to the one under which Comcast was operating and to make franchise enforcement easier for staff. However, we have conceded to use the Verizon format for the new MACC franchise. Verizon has proposed only providing cable service in their historical telephone service area, and we are likely to allow them to exclude at least one MACC member from their service area requirements. We are pleased that Verizon has indicated they are willing to provide PEG channels and capital funding passed-through to subscribers comparable to our incumbent cable operator.

As we continue our cable franchise negotiations with Verizon, we do not plan to "demand" any particular provisions, and expect they will view the process the same way. We cannot expect Verizon to be exactly comparable to our incumbent able operator, nor can they expect the MACC service area to be exactly like Keller, TX, Fairfax County, VA, or Hermosa Beach, FL. We appreciate the FCC allowing this process to continue under the current interpretations of federal law.

Conclusions

Over the past 25 years, local cable franchising has worked extremely well in the MACC service area. Subscribers have benefited from local enforcement of consumer protection standards, MACC has twice been able to use the FCC processes to correct excessively high rates for Basic cable service or installation and equipment rates, and schools, libraries, public safety, and others have benefited from lower-cost, reliable I-Net services. Our consortium has handled five (5) changes of control during its existence. During this time, subscriber penetration has peaked (near 64%) and now leveled off at about 57%. Subscribers benefited from the franchise-required upgrade of the cable system, and Comcast is reaping the rewards, being able to now provide many digital channels, Internet access, and digital telephone. We have provided information that shows that our intergovernmental organization is experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account. As a consortium, MACC consistently offers the opportunity for one cable provider to address the needs of 14 jurisdictions with one negotiation, and also provides area cable subscribers with a single local point of contact to resolve cable complaint issues.

As the Commission considers concerns that are being expressed by new entrants to cable provision, we urge you to consider who is most appropriate to determine how long it should take to negotiate a cable franchise, and which parties are responsible when the process takes longer than either party is expecting. The process involves two parties in the negotiation, so two parties are responsible whenever a franchise negotiation takes time. Neither party is expected to concede to all of the requests of the other, so perhaps there is no one to "blame" when the process takes longer than either party would prefer.

We believe local cable franchising ensures that local cable providers are allowed access to the rights of way in a fair and competitive manner, not causing undue inconvenience to all of the other users of the rights-of-way, and uses of the rights-of-way, are done according to local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are provided comparable protections. There is no need to create a new Federal bureaucracy in Washington to handle such matters that are so specifically local. We urge the FCC not to attempt to absorb the role of local cable franchising, particularly for services from telecommunications providers.

Local franchises allow every community, or group of communities like MACC's, to have a voice in how local cable systems will be implemented and what features (such as PEG Access, Institutional Networks, and local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

MACC respectfully requests that the Commission does not interfere with our current local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,
On behalf of the Metropolitan Area Communications Commission

Bruce Crest, Administrator
bcrest@maccor.org

Sarah Hackett, Policy & Regulatory Affairs Manager
shackett@maccor.org

1815 NW 169th Pl, Suite 6020
Beaverton, Oregon 97006
503-645-7365

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov